

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
IN RE: )  
)  
)

NEW ENGLAND MEDICAL )  
COMPOUNDING PHARMACY, INC. )  
PRODUCTS LIABILITY LITIGATION, )  
\_\_\_\_\_)

Multi-District Litigation  
Case No. 1:13-md-2419-RWZ

**TORT TRUSTEE’S NOTICE OF RETENTION OF  
MICHAEL J. FENCER, ESQ. AND CASNER & EDWARDS, LLP**

Lynne F. Riley, Tort Trustee<sup>1</sup> under the Tort Trust dated June 4, 2015 created pursuant to the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.* confirmed by the Bankruptcy Court on May 20, 2015, gives notice of her retention of Casner & Edwards, LLP (“Casner & Edwards”) as her counsel to represent her in the completion of her duties as Tort Trustee and the distribution of Tort Trust assets to its beneficiaries.

In the interests of full disclosure, and to inform the Court about her decision to retain Casner & Edwards, the Tort Trustee’s own firm, the Tort Trustee submits the following:

1. By order dated May 14, 2015 [Docket No. 1853], this Court allowed the cross-motion of the Plaintiff’s Steering Committee (“PSC”) [Docket No. 1798] appointing the Tort Trustee. When she agreed to accept the appointment of Tort Trustee if approved by this Court, the Tort Trustee also agreed with the PSC that if appointed she would not retain her own law firm to represent her as Tort Trustee. As stated in its cross-motion [Docket No. 1798], such employment was a concern of the PSC at that time.

\_\_\_\_\_  
<sup>1</sup> Capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to those terms in the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.*

2. Following her appointment, and after investigating the billing rates and skill levels of local attorneys appropriate for the engagement, the Tort Trustee retained Attorney Michael J. Fencer of Jager Smith P.C. ("Jager Smith"), with the approval of the PSC.

3. On December 31, 2016 Jager Smith ceased practicing law, and Attorney Fencer joined Casner & Edwards on January 1, 2017. Since then, the Tort Trustee has informed the PSC of Attorney Fencer's move to the Tort Trustee's firm, and of her choice to continue Attorney Fencer's representation of her as Tort Trustee at the same hourly rates as he charged for his services while at Jager Smith.

4. After consideration of Attorney Fencer's billings to the Tort Trustee to date, the limited amount of work remaining for the Tort Trustee to complete her duties, and the obvious benefits of continuity of the professionals involved, the PSC is no longer concerned about the Tort Trustee's retention of her own firm to represent her, and consents to Attorney Fencer and Casner & Edwards representing the Tort Trustee.

5. The Tort Trustee notes for the Court that her retention of Casner & Edwards is not prohibited by any of the operative documents in this litigation. Specifically, Section 5.09 of the Plan does limit the Tort Trustee's choice of counsel. Likewise, Paragraph 29 of the Bankruptcy Court Order confirming the Plan, which deals with the Tort Trustee's employment of professionals, also has no limitations. Even this Court's order appointing the Tort Trustee places no limits on her choices of counsel. However, since this Court predicated its decision to appoint the Tort Trustee on the need for transparencies and independence, and presumably considered, and perhaps shared the PSC's concerns raised in its cross-motion [Docket No. 1798], the Tort Trustee and the PSC wanted to specifically inform this Court about this development.

Respectfully Submitted,

LYNNE F. RILEY, TORT TRUSTEE,

By her attorneys,

/s/ Michael J. Fencer

---

Michael J. Fencer (BBO No. 648288)  
CASNER & EDWARDS, LLP  
303 Congress Street  
Boston, Massachusetts 02210  
T: 617-426-5900  
F: 617-426-8810  
E: fencer@casneredwards.com

Dated: February 3, 2017

ACKNOWLEDGED AND AGREED:

PLAINTIFF'S STEERING COMMITTEE,

By its attorneys,

/s/ Thomas M. Sobol<sup>2</sup>

---

Thomas M. Sobol (BBO No.471770)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
55 Cambridge Parkway, Suite 301  
Cambridge, Massachusetts 02142  
T: 617-482-3700  
F: 617-482-3003  
E: tom@hbsslaw.com

---

<sup>2</sup> Pursuant to Part M.2. of this Court's *General Order Re: Electronic Case Filing*, the filing attorney hereby certifies that each of the other signatories has expressly agreed to the form and substance of this document, and that the filing attorney has their actual authority to submit this document electronically bearing their electronic signatures.

**CERTIFICATE OF SERVICE**

I, Michael J. Fencer, hereby certify that on the date set forth above I caused true copies of the foregoing document to be served through the Court's CM/ECF system upon all registered electronic filers appearing in this case.